

Senate Bill No. 249

Passed the Senate September 11, 2015

Secretary of the Senate

Passed the Assembly September 11, 2015

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 8 (commencing with Section 15400) to Division 6 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 249, Hueso. Vehicles: enhanced driver's license.

Existing law requires the Department of Motor Vehicles, upon proper application, to issue driver's licenses and identification cards.

The federal Western Hemisphere Travel Initiative facilitates travel within the western hemisphere by authorizing the use of enhanced driver's licenses and identification cards meeting specified requirements as travel documents.

This bill would authorize the Department of Motor Vehicles to enter into a memorandum of understanding with a federal agency for the purpose of facilitating travel within the western hemisphere pursuant to the federal Western Hemisphere Travel Initiative through the issuance of an enhanced driver's license, provisional license, or identification card. The bill would authorize the department to issue or renew, upon request, an enhanced driver's license, provisional license, or identification card for specified persons. The bill would require a person applying for the initial issuance or renewal of an enhanced driver's license, provisional license, or identification card to submit, under the penalty of perjury, additional proof of identity, residency, and citizenship that satisfies the requirements of the federal Western Hemisphere Travel Initiative. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program. The bill would require the department to provide a protective shield and to take other specified security measures for the enhanced driver's license, provisional license, or identification card.

The bill would also require the department to submit an annual report to specified committees of the Legislature on the implementation of the enhanced driver's license, provisional license, and identification card. The bill would require a person applying for an enhanced driver's license, provisional license, or identification card to submit an additional application fee. The bill

would require the department to set, by regulation, the application fee in an amount not to exceed the reasonable regulatory cost of issuing or renewing the license or identification card, or \$55, whichever is less, and to provide specified information to the applicant. The bill would require the fees to be deposited into the Motor Vehicle Account. The bill would, upon appropriation by the Legislature, require those fees to be expended by the department in implementing the above provisions. The bill would prohibit specified information submitted by an applicant for an enhanced driver's license, provisional license, or identification card from being disclosed by the department, as specified. The bill would make all laws related to the privacy or security of a driver's license, provisional license, or identification document, or a similar document, or regulating the use, access or sharing of information, applicable to enhanced driver's licenses, provisional licenses, and identification cards.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Each year, more than 45,000,000 personal vehicle passengers and 15,000,000 pedestrians enter the state from Mexico.

(b) Border crossers have an economic impact on the state, accounting annually for \$4,005,000,000 in economic benefits and 67,000 jobs.

(c) Border wait times during peak hours average 120 minutes on weekdays and even longer on weekends.

(d) More than 8,000,000 trips are lost due to congestion each year in the San Ysidro Port of Entry, the busiest port of entry in the world.

(e) In the San Diego region alone, this translates into a revenue loss of nearly \$1,003,000,000, 3,000,000 potential working hours, 35,000 jobs, and \$42,000,000 in wages.

(f) It is estimated that border wait times will significantly increase in the future and an additional 15 minutes in border wait times will affect productivity in the binational border region by an additional \$1,000,000,000 in costs and a loss of 134,000 jobs.

(g) Because border wait times impede international travel, trade, and commerce, the Legislature must act to protect California's jobs and economy.

(h) After the 9/11 attacks, the federal government enacted the federal Western Hemisphere Travel Initiative (WHTI) (Public Law 110-53 and Public Law 108-458), to facilitate entry for United States citizens and legitimate foreign visitors, while strengthening United States border security, by requiring United States and Canadian travelers to present a passport or other documents that denote identity and citizenship when entering the United States. The documentation requirements of the WHTI went into effect in 2007 for air travel into the United States and in 2009 for land and sea travel.

(i) In addition to a passport and other documents, the federal government approved, for cross-border travel, the use of an enhanced driver's license (EDL), which is a standard state-issued driver's license that has been enhanced in process, technology, and security to denote identity and citizenship for purposes of entering the United States at the land and sea ports of entry. An EDL contains radio frequency identification (RFID) technology, which allows information contained in a wireless device or tag to be read from a distance, and eliminates the need to key in travelers, translating into 60 percent faster processing than manual queries.

(j) Another advantage of an EDL is that it can be used in Ready Lanes, which were created by the United States Customs and Border Protection and are used as primary vehicle lanes dedicated to travelers who possess RFID-enabled travel documents.

(k) The use of an EDL as an RFID-enabled travel document is already in place in the States of Washington, New York, Michigan, and Vermont.

(l) The use of EDLs in the state will open the way for the United States Customs and Border Protection to convert more vehicle lanes into Ready Lanes, which will decrease border wait times by an average of 30 minutes and thus provide a significant, long-term economic benefit to the state, while strengthening border security.

(m) It is the intent of the Legislature that the decision to obtain an enhanced driver's license is strictly voluntary. To that end, if California enters into a memorandum of understanding with a federal agency for the purposes of obtaining approval to issue an enhanced driver's license, provisional license, or identification card pursuant to the federal Western Hemisphere Travel Initiative (Public Law 110-53 and Public Law 108-458), it is the intent of the Legislature that an employer shall not require an employee to apply for, or use, an enhanced driver's license, provisional license, or identification card as a condition of employment, nor shall an employer discharge an employee, or otherwise discriminate or retaliate against an employee who refuses to apply for, or use, an enhanced driver's license, provisional license, or identification card.

SEC. 2. Chapter 8 (commencing with Section 15400) is added to Division 6 of the Vehicle Code, to read:

CHAPTER 8. ENHANCED DRIVER'S LICENSE AND IDENTIFICATION
CARD

15400. The department may enter into a memorandum of understanding with a federal agency for the purposes of obtaining approval for the issuance of an enhanced driver's license, provisional license, or identification card that is acceptable as proof of identity and citizenship pursuant to the federal Western Hemisphere Travel Initiative (Public Law 110-53 and Public Law 108-458). Prior to entering into any memorandum of understanding, the department shall consult with appropriate interested parties, including, but not limited to, business and privacy groups, regarding the issues raised by implementation of this chapter.

15401. (a) Upon the request of an applicant, the department may issue an initial enhanced driver's license, provisional license, or identification card to, or renew the enhanced driver's license, provisional license, or identification card of, a person who satisfies all of the following:

- (1) Is 16 years of age or older.
- (2) Is a resident of this state.
- (3) Is a citizen of the United States.

(b) (1) In addition to other information required pursuant to Chapter 1 (commencing with Section 12500), the applicant shall submit sufficient proof that meets the requirements of the federal Western Hemisphere Travel Initiative (Public Law 110-53 and Public Law 108-458) to establish his or her identity, residency, and citizenship.

(2) The applicant shall certify, under the penalty of perjury, that the information submitted pursuant to paragraph (1) is true and correct to the best of the knowledge of the applicant.

(3) The department shall provide a protective shield at the time the enhanced driver's license, provisional license, or identification card is issued to the individual, and inform the applicant in writing that the information on the driver's license, provisional license, or identification card can be read remotely without the holder's knowledge, if the enhanced driver's license, provisional license, or identification card is not enclosed in the protective shield.

(4) The applicant shall sign a declaration acknowledging his or her understanding of radio frequency identification technology and the purpose of the protective shield.

(c) The department shall include, in the enhanced driver's license, provisional license, or identification card, reasonable security measures, including tamper-resistant features to prevent unauthorized duplication or cloning and to protect against unauthorized disclosure of personal information regarding the person who is the subject of the license or card.

(d) The enhanced driver's license, provisional license, or identification card shall include radio frequency identification technology. The radio frequency identification technology shall contain a randomly assigned number or employ other security measures deemed necessary by the department to make any information on the card unintelligible to an unauthorized reader. In any event, the radio frequency technology shall contain only the information needed to comply with the United States Department of Homeland Security requirements and a machine readable zone or barcode that contains only as much information as is required by the federal Western Hemisphere Travel Initiative

(Public Law 110-53 and Public Law 108-458) to permit a border crossing.

(e) An enhanced driver's license may be suspended, revoked, or restricted pursuant to this code.

15402. (a) An applicant applying for an initial enhanced driver's license, provisional license, or identification card, shall have his or her photograph and signature captured or reproduced by the department at the time of application.

(b) All laws related to the privacy or security of a driver's license, provisional license, or identification document, or a similar document, or regulating the use, access, or sharing of information, apply to enhanced driver's licenses, provisional licenses, and identification cards.

(c) (1) The department shall examine and verify the genuineness, regularity, and legality of an application and proof submitted to the department for an initial issuance of an enhanced driver's license, provisional license, or identification card.

(2) The department may require the submission of additional information to establish identity, residency, and citizenship.

(3) The department shall deny an application of an enhanced driver's license, provisional license, or identification card if the department is not satisfied with the genuineness, regularity, and legality of the application or supporting documentation or the truth of any statement contained in the application or supporting documentation, or for any other reason authorized by law.

(d) The department shall retain copies or digital images of documents provided by the person pursuant to this chapter.

(e) Notwithstanding subdivision (d), and except as required by other law, in the case of the denial of an application for the issuance of an enhanced driver's license, provisional license, or identification card, the department shall retain the photograph of the applicant and the reason for denial for not less than one year, unless fraud is suspected, in which case the applicant's photograph and the reason for denial shall be retained for not less than 10 years.

(f) The photograph, signature, copies, and digital image of documents required pursuant to this section are exempt from public disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(g) Except as required by federal law, information submitted by an applicant pursuant to this chapter shall not be disclosed to a foreign nation.

15403. (a) In addition to fees required pursuant to this division, a person requesting the initial issuance or renewal of an enhanced driver's license, provisional license, or identification card shall submit an additional nonrefundable application fee with the application. The department shall set, by regulation, the application fee in an amount not to exceed the reasonable regulatory cost of issuing or renewing that license or identification card, or fifty-five dollars (\$55), whichever is less.

(b) Fees submitted shall be deposited into the Motor Vehicle Account, to be available, upon appropriation by the Legislature, to implement this chapter.

15404. The department shall submit an annual report in compliance with Section 9795 of the Government Code to the Assembly and Senate Committees on Judiciary, the Senate Committee on Transportation and Housing, and the Assembly Committee on Transportation. The report shall include, but not be limited to, information on the number of enhanced driver's licenses, provisional licenses, and identification cards issued, the effect on wait times and traffic congestion at points of entry, and whether or not there have been any security or privacy breaches related to the use of the enhanced driver's licenses, provisional licenses, and identification cards. Information from the federal government that is required to be reported pursuant to this section need only be reported to the extent the information is received from the federal government.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 15402 to the Vehicle Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The need to protect individual privacy from the public disclosure of private information submitted by an applicant for an enhanced driver's license, provisional license, or identification card outweighs the interest in the public disclosure of that information.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2015

Governor